IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-742

JEROME MILLER, Individually and as Director of THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES and THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES of the STATE OF ILLINOIS,

Appellants

vs.

MARCEL YOUAKIM and LINDA YOUAKIM individually and as foster parents, TIMOTHY ROBERTSON, a minor, by his sister and next friend LINDA YOUAKIM, MARY LOU ROBERTSON, a minor, by her sister and next friend LINDA YOUAKIM, LARRY ROBERTSON, a minor, by his sister and next friend LINDA YOUAKIM, and SHERRY ROBERTSON, a minor, by her sister and next friend LINDA YOUAKIM, and all others similarly situated,

Appellees

On Appeal From the United States Court of Appeals for the Seventh Circuit

BRIEF AND ARGUMENT FOR APPELLANTS

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BRIEF AND ARGUMENT FOR APPELLANTS

OPINIONS BELOW

The opinion of the United States Court of Appeals is reported at 562 F. 2d 483 (7th Cir. 1977) and is reproduced in Appendix B of appellants' Jurisdictional Statement. The memorandum opinion of the district court rendered July 27, 1976, which is reproduced as an appendix to the decision of the court of appeals, is reported at 431 F. Supp. 40 (N.D. Ill.) The judgment order of the district court entered August 24, 1976 (Jurisdictional Statement, Appendix C) is not reported. The opinion of the Supreme Court of the United States rendered in this cause on March 31, 1976 (Jurisdictional Statement, Appendix D) is reported at 425 U.S. 231, 47 L. Ed. 2d 701. The opinion of the three judge district court originally assigned to hear this cause, rendered on February 28, 1974 (Jurisdictional Statement, Appendix E), is reported at 374 F. Supp. 1204 (N.D. Ill.)

JURISDICTION

Appellees brought a civil rights action alleging jurisdiction under 28 U.S.C. §§ 1343(3), (4), 2281 and 2284 to enjoin the enforcement of the foster home provisions of the Illinois Child Care Act, Ill. Rev. Stat., 1971, ch. 23, §§ 2212.05, 2212.17 and 5005, as violative of the United States Constitution and the Social Security Act. On September 27, 1977, the United States Court of Appeals for the Seventh Circuit affirmed the district court's determination that the Illinois statutes violated the Social Security Act and the supremacy clause of the United States Constitution.

Appellants filed their notice of appeal in the court of appeals on November 3, 1977. (Jurisdictional Statement,

Appendix F) Appellants have invoked the jurisdiction of this Court to review the decision of the court of appeals by virtue of 28 U.S.C. § 1254(2). This Court noted probable jurisdiction on February 21, 1978.

QUESTION PRESENTED

Whether the Illinois statutory foster care scheme, which provides monetary foster care benefits on behalf of children living only with persons unrelated to them, is consistent with the purpose and meaning of the AFDC foster care program under the Social Security Act, and is therefore consistent with the supremacy clause of the United States Constitution?

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

U.S. Const., art. VI;
42 U.S.C. § 601;
42 U.S.C. § 602(a);
42 U.S.C. § 603;
42 U.S.C. § 605;
42 U.S.C. § 606;
42 U.S.C. § 607(a);
42 U.S.C. § 608;
45 C.F.R. § 220.19 (1975);
45 C.F.R. § 233.90(c)(1)(v) (1975);
45 C.F.R. § 233.90(c)(2) (1975);
45 C.F.R. § 233.110 (1975);
Ill. Rev. Stat. 1971, ch. 23, §§ 4-1 to 4-11;

Ill. Rev. Stat. 1971, ch. 23 § 2212.05;
Ill. Rev. Stat. 1971, ch. 23, § 2212.17;
Ill. Rev. Stat. 1971, ch. 23, § 5001;
Ill. Rev. Stat. 1971, ch. 23, § 5005.

(See Supplement in back of this brief for reproduction of these provisions.)

STATEMENT OF THE CASE

As part of the federal program for Aid to Families with Dependent Children, the State of Illinois provides federally subsidized foster care payments (AFDC-FC) of up to $105 per month for a dependent child living in a foster family home or child care institution (42 U.S.C. § 608). Under the Illinois Child Care Act, the state does not grant foster care payments to persons who are related to the children for whom they care. Ill. Rev. Stat., 1971, ch. 23, § 2212.17. Instead, persons related to dependent children are eligible to receive payments of $63 per month under the state's basic AFDC program. However, as an exception to its general policy, the State of Illinois will supplement payments to persons caring for related dependent children upon a showing of need, which may bring the total AFDC payments to $105 per child. (A. 39-40)

Appellees in this case [hereinafter referred to as "plaintiffs"] are Marcel and Linda Youakim, husband and wife, and Timothy, Mary Lou, Larry and Sherry Robertson, Linda Youakim's minor brothers and sisters. In 1969, the minor plaintiffs were declared wards of the state, and since that time, Larry and Sherry Robertson have been living at unrelated foster care facilities. (A. 7-8) Since 1972, the Youakims have provided a home for Timothy and Mary Lou after signing a Relative Home Placement Agreement in which they agreed to provide for these children's physical, mental, emotional and spiritual needs. (A. 20-23) The Youakims were found ineligible to receive AFDC-FC pay-

ments of $105 per month for each child because they are related to Timothy and Mary Lou, but were instead found eligible for assistance under the basic AFDC program.[1]

On March 13, 1973, plaintiffs filed a civil rights class action pursuant to 42 U.S.C. § 1983 in the United States District Court for the Northern District of Illinois against the Illinois Department of Children and Family Services and Jerome Miller, its former director [hereinafter referred to as "defendants"]. (R. 1) On April 2, 1973, defendants filed their motion to strike and dismiss. (A. 41-42) In their Second Amended Complaint filed January 21, 1974, plaintiffs alleged that because they could not receive regular AFDC-FC payments at the prevailing $105 rate, plaintiffs could neither provide adequate care for Timothy and Mary Lou, nor consider bringing Larry and Sherry into the Youakim home. Plaintiffs further contended that the Illinois foster care scheme violates the equal protection clause of the Fourteenth Amendment to the United States Constitution because it authorizes foster care payments to unrelated foster parents but refuses to allow foster care payments to persons related to the children for whom they care. Plaintiffs asked the court to enjoin defendants from enforcing Ill. Rev. Stat., ch. 23, §§ 2212.05, 2212.17, and the Department's Placement Manual, ch. 5, § 3, as violative of the equal protection clause. (A. 5-20)

The parties stipulated that defendants' motion to dismiss could stand as to the amended complaint. A three-judge court was convened pursuant to plaintiffs' request and on February 28, 1974, the three-judge court granted

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1. Since 1974, the Youakims have received supplemental payments for the care of Timothy and Mary Lou, and they now receive monthly payments totaling $105 for each child.

defendants' motion to dismiss. The court specifically found that the Illinois scheme did not violate plaintiffs' right to equal protection. (Jurisdictional Statement, Appendix E)

On April 23, 1974, plaintiffs filed their Notice of Appeal to the United States Supreme Court. (R. 21) In their jurisdictional statement, plaintiffs not only raised their equal protection challenge, but also claimed that the Illinois foster care scheme is inconsistent with the Social Security Act and, therefore, violates the supremacy clause. The Supreme Court noted probable jurisdiction on March 17, 1975, and on March 31, 1976, the Court vacated and remanded the judgment of the three-judge district court. The Supreme Court stated that the supremacy clause issue was not presented to the three-judge court as a separate ground for decision. In addition, the Court noted that after the filing of plaintiffs' jurisdictional statement but before probable jurisdiction was noted, the Department of Health, Education and Welfare (HEW) had issued a "Program Instruction" which stated that the AFDC-FC rate applied "regardless of whether or not the foster care home is operated by a relative." (A. 48-50) This position was supported by the Solicitor General in his *amicus* memorandum to the Court. (A. 51-56) In light of these factors, the Supreme Court felt that the district court should be given an opportunity to rule on plaintiffs' supremacy clause claim. (Jurisdictional Statement, Appendix D)

On remand, plaintiffs filed a motion for preliminary injunction and summary judgment on June 10, 1976 (A. 44-47), and defendants filed a cross motion for summary judgment on June 14, 1976 (A. 57-58). On July 27, 1976, the district court, acting through a single judge, granted plaintiffs' motion for summary judgment. The court found that the Illinois foster care statutes, (Ill. Rev. Stat., 1971,

ch. 23, §§ 2212.05, 2212.17 and 5005) were repugnant to §§ 401 and 408 of the Social Security Act (42 U.S.C. §§ 601, 608) and to the supremacy clause of the United States Constitution. (Jurisdictional Statement, Appendix B, 31) At the same time, the court found it unnecessary to reach the equal protection issue. On August 24, 1976, the court enjoined defendants from enforcing the Illinois statutes insofar as those statutes excluded persons related to foster children from eligibility under the AFDC-FC program. In addition to other relief not relevant here, the court ordered defendants to make full AFDC-FC payments to otherwise eligible foster parents who currently have related foster children living with them. (Jurisdictional Statement, Appendix C)

On August 24, 1976, defendants filed their Notice of Appeal to the seventh circuit from the district court orders. (R. 41) On September 27, 1977, the court of appeals rendered its opinion affirming, with slight modification, the orders entered by the district court. (Jurisdictional Statement, Appendix B).

SUMMARY OF ARGUMENT

I. The Illinois statutory foster care scheme which distinguishes between relatives caring for related children and strangers who act as foster parents is consistent with the Social Security Act and the supremacy clause of the United States Constitution.

The basic AFDC program established by the Social Security Act (42 U.S.C. §§ 601-606) provides aid to needy children who live with their parents and certain close relatives. The supplemental AFDC-FC program (42 U.S.C. § 608) provides aid to children who are removed by court order from the homes of these persons and placed in foster family homes or child-care institutions. The fact that Congress has explicitly provided AFDC for children living with related persons indicates a congressional intent not to include such children in the AFDC-FC program.

The distribution of public aid funds by the State of Illinois parallels the federal welfare program. Under Illinois law, essentially the same class of relatives designated in the Social Security Act is eligible for public aid under the state AFDC program. AFDC-FC assistance is administered under a separate program which defines a "foster family home" as a residence which receives unrelated children. Since plaintiffs care for needy children who are related to them, they have properly received public assistance under the AFDC program rather than under the foster care program.

A. The Social Security Act itself distinguishes between foster parents and related persons who care for a child. Unquestionably, the predominant purpose of the AFDC program, as set forth in § 401, is to insure that

whenever possible dependent children will be cared for in homes provided by close relatives. Each of the provisions pertaining to the basic AFDC program consistently treat parents and close relatives as one entity. Under the basic program, money payments as well as medical and remedial care are provided for both needy dependent children and the adult relatives with whom they live.

However, the Act likewise shows Congressional concern with the much broader problem of the care and protection of children generally. Initially, children whose welfare was jeopardized in the home of a parent or relative could not obtain federal assistance if they were removed from a related home and placed with non-relatives. The Act was amended to require that states which participate in the federal welfare program must provide aid in the form of foster care for children who are removed from the home of a parent or relative and placed in a foster home or child-care institution. Congress could not have intended to merely duplicate federal assistance which was already provided under AFDC to parents and close relatives of dependent children. Rather, the newer AFDC-FC program was meant to remedy those situations where related care is either unavailable or inadequate by providing a less desirable but necessary alternative to care in the child's own home in the form of foster care.

B. The legislative history of the Social Security Act indicates that Congress intended the foster care program to function simply as a supplement to the regular AFDC program. Since the origin of the Social Security Act, AFDC payments have been administered under Title IV, whereas aid to foster children was first administered in a less structured fashion under Title V. In 1961, the states were given the option of bringing dependent children in need of foster care into the federally aided program un-

der Title IV. This new legislation followed a recognition by Congress that some home environments are contrary to the best interests of children and remedial action was not possible unless the states were granted additional funds in order to provide for care of the child in a foster family home or child-care institution when necessary. The Senate Committee expressly noted that the foster care program gave the states an alternative to leaving children in unsuitable homes of parents or relatives, or caring for them elsewhere without federal participation in the cost.

Therefore, the Illinois practice of treating related persons separately from foster parents, and of granting a higher level of payments to foster home care, conforms to the underlying purpose and meaning of the Social Security Act.

C. This Court has stated that it will not accept the interpretations of the agency responsible for administering the Social Security Act which are inconsistent with the federal statute; further, that little weight will be given to interpretations which conflict with earlier agency pronouncements.

Since plaintiffs are related to the needy children for whom they care, the state has properly determined that they should not be regarded as foster parents under the federal welfare program. Even though the present position of HEW regarding foster care conflicts with this determination, it was nevertheless explicitly accepted by HEW in the past, both in the official regulations contained in C.F.R. and in a letter by HEW affirming the position of the State of Illinois that plaintiffs simply are not foster parents, and are consequently not entitled to foster care benefits under AFDC-FC. The official regulations specifically regard a child as "living with" his rela-

tive for purposes of receiving AFDC benefits even though he is under the supervision of the court or in the legal custody of a state agency. Under this regulation, the present plaintiffs are eligible for participation in the AFDC program, and are not eligible for benefits under the foster care program.

Because the Illinois statutory foster care scheme is consistent with the Social Security Act and the supremacy clause of the United States Constitution, this Court should reverse the decision of the court of appeals which enjoined the enforcement of the Illinois statutes.

ARGUMENT

I.

THE ILLINOIS STATUTORY FOSTER CARE SCHEME IS CONSISTENT WITH THE PURPOSE AND MEANING OF THE SOCIAL SECURITY ACT, AND DOES NOT, THEREFORE, VIOLATE THE SOCIAL SECURITY ACT OR THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION.

Introduction

Like every other state in the Union, Illinois has chosen to participate in the federal Aid to Families With Dependent Children welfare program (AFDC, 42 U.S.C. § 601 *et seq.*). Originating with the Social Security Act of 1935, this program provides aid to families with dependent children where such children are deprived of parental support because a parent is absent from the home, incapacitated or dead, and the children are living with either their natural parents or with certain relatives specified in § 406 (42 U.S.C. § 606)[2]

In addition to this basic program, Congress extended the AFDC program in 1961 to include dependent children of unemployed fathers (AFDC-E, 42 U.S.C. § 607). At the same time, the AFDC-FC program was established (42 U.S.C. § 608) to provide aid to children who were removed

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2. Section 406(a) specifies the following relatives in addition to father and mother as being within the ambit of the AFDC program laid out in § 406: grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew or niece.

by court order from the homes of those relatives designated in § 406 and placed in foster family homes or in child-care institutions. Under the Social Security Act, all states participating in the federal AFDC welfare program must also provide foster care payments in accordance with § 408. (42 U.S.C. § 602 (a) (20)).

This case involves the interaction of the AFDC (42 U.S.C. § 606) and AFDC-FC (42 U.S.C. § 608) programs. In administering these programs the State of Illinois distinguishes between relatives caring for related children and unrelated persons who act as foster parents of needy dependent children. Thus, under the AFDC program, which is administered by the Illinois Department of Public Aid (Ill. Rev. Stat. 1971, Ch. 23, §§ 4-1 to 4-11), needy children who are living with their parents or certain relatives specified in § 4-1.2,[3] are entitled to monthly assistance of approximately $63. Under the AFDC-FC program, which is administered by the Illinois Department of Children and Family Services (Ill. Rev. Stat., 1971, ch. 23, § 5001 *et seq.*), needy children who are living with unrelated persons are entitled to monthly benefits of approximately $105.[4]

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3. Section 4-1.2 (Ill. Rev. Stat. 1971, ch. 23, § 4-1.2) of the Illinois statute includes within the ambit of the basic AFDC program essentially the same class of relatives as provided for in § 406(a) of the Social Security Act. In addition to father or mother, § 4-1.2 of the Illinois statute specifies that the child or children must be living with one of the following relatives: grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, or other relative approved by the Department.

4. Section 2212.05 defines a "facility for child care" as "any person, group of persons, agency, association or organization . . . who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility. . . ." Section 2212.17 defines a "foster family home" as "a facility for child care in residences of families who receive no more than 8 children unrelated to them. . . ."

There is no question in this case that plaintiffs are eligible to receive some federal welfare assistance. The dispute evolves from plaintiffs' contention that they necessarily are included within the class of "foster parents" set out in the supplemental AFDC-FC program rather than the class of "relatives" set out in the basic AFDC program, even though they are related to the needy children for whom they care, and thus are covered under the regular AFDC program set out in § 406. Plaintiffs, therefore, claim to be entitled to monthly assistance of $105 per month rather than to the $63 per month allocated under the basic AFDC program. The logical extension of plaintiffs' claim that they are entitled to AFDC-FC assistance is that they are covered in two areas of the federal welfare scheme—the basic AFDC program under § 406, and the foster care program under § 408. However, the fact that Congress explicitly provided AFDC for children living with related persons under § 406 is strong evidence of a congressional intent not to include such children in the AFDC-FC program. (*See Burns* v. *Alcala*, 420 U.S. 575, 43 L. Ed. 2d 469, 476 (1975).)

The defendants respectfully submit that since persons situated like plaintiffs are eligible under the federal welfare scheme for AFDC benefits, they are properly excluded from foster care benefits; further, that the AFDC and AFDC-FC programs as administered by the State of Illinois, which distinguish between relatives caring for re-

lated children and strangers who act as foster parents, are consistent with the requirements and underlying purposes of the Social Security Act as well as the long-standing policy of HEW.

A.

The Plain Meaning Of The Social Security Act Indicates That Congress Intended To Provide AFDC Assistance To Needy Children Cared For By Relatives, Such As Plaintiffs, Through § 406 Rather Than Through The Foster Care Program Contained In § 408.

As stated above, §§ 401 through 406 of the Social Security Act constitute the basic AFDC program. The purpose of the basic program, as stated in § 401, is to help maintain and strengthen family life by encouraging the care of dependent children in the homes of their parents, or alternatively, in the homes of relatives. To accomplish this purpose, federal appropriations are authorized under § 401 to enable each state to furnish financial assistance and other services to needy dependent children, and to the parents or relatives with whom they are living. The subsequent sections pertaining to AFDC provide the mechanism by which the above goal is to be achieved. Notably, each section regards certain relatives on an equal basis with the natural parent.

Section 406 designates those persons who are eligible for AFDC. The first such group consists of "needy dependent children." (§ 406 (a)) These are children who have been deprived of parental support or care by reason of the death, continued absence, or physical or mental incapacity of a parent; who are under 18 years of age, or under 21 and are students; and who are living with their father or mother, or with certain specified close relatives. A needy

dependent child now also includes a child who has been deprived of parental care or support because of the unemployment of his father, and who is living with his parents or certain close relatives (§ 407). If a child fits into any one of these categories, he is considered eligible by federal standards for AFDC assistance. The minor plaintiffs meet the criteria for AFDC assistance, and they are, indeed, receiving such assistance.

The families of dependent children may likewise be eligible for AFDC assistance. Under § 406(b), the term "aid to families with dependent children" means money payments, as well as medical or remedial care in behalf of a dependent child. By amendment in 1950, adult relatives such as the Youakims who care for dependent children also became eligible for these benefits under § 406(b)(1). (See S. Rep. No. 165, 87th Cong., 1st Sess. (1961) U.S. Cong. & Adm. News, V. 2, 1723). Section 406(c) redefines the term "relative" within the meaning of the basic AFDC program as any individual specified in § 406(a) (such as natural parents, grandparents, sister or brother) with whom a dependent child is living in a place of residence maintained by that individual as his own home. These provision leave no question that natural parents and close relatives such as the Youakims conceptually constitute one complete category regarding AFDC benefits.

Numerous other AFDC provisions support the proposition that the terms "parent" and "relative" are consistently regarded as one unit throughout the basic AFDC welfare scheme, thus reinforcing the concept that children situated like the minor plaintiffs in this case, when cared for by either parents or relatives, are eligible for federal

welfare assistance under the basic AFDC program.[5] However, while these provisions clearly establish that, under the federal welfare scheme, the home of a parent or relative remains the ideal environment for a child, at the same time an even more important purpose behind the federal program granting aid for the care of children is the overall interest of the public in the protection of the child. *See King* v. *Smith*, 392 U.S. 309, 20 L. Ed. 2d 1118, 1130 (1968); *Ramos* v. *Montgomery*, 313 F. Supp. 1179, 1181 (S.D. Cal. 1970) aff'd 400 U.S. 1003, 27 L. Ed. 2d 618 (1971).

In this regard, Congress has recognized the difficulties sometime encountered in maintaining and strengthening "family life," and has provided several alternatives where the child's welfare is threatened by the misconduct of a parent or close relative. Once such alternative is found in § 406(b)(2), which includes a new concept of "protective payments" in the definition of "aid to families with dependent children."[6]

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5. For example, § 402(a)(7) provides that the state agency shall, in determining AFDC need, take into consideration any other income and resource of any child or relative claiming aid to families with dependent children. Section 402(a)(19) provides that every individual receiving assistance must register for manpower services, training or employment, unless such individual is a mother or other relative who is caring for a child under the age of six. Section 405 provides for counseling and guidance to relatives who are unable to manage the use of welfare payments for the benefit of the child.

6. These protective payments, instituted in 1962, are an important safeguard for the child in situations where his welfare is jeopardized. They allow the states to make payments, including direct vendor payments for food and various services, to other interested or concerned individuals when welfare funds are misused by an incompetent or irresponsible parent or relative. (S. Rep. No. 1589, 87th Cong., 2d Sess. (1962) U.S. Cong. & Adm. News, V. 1, 1954; S. Rep. No. 744, 90th Cong., 1st Sess. (1967) U.S. Cong. & Adm. News, V. 2, 2837.)

The new protective payment provision in § 406(b)(2) contains several limitations—it applies only to a state whose welfare plan provides for a determination by the state agency that payments in this form are necessary because the relative is so unable to manage funds that it would be contrary to the child's welfare to make the payments to such relative (§ 406(b)(2)(A). The provision requires special efforts by the state to improve the ability of the relative to manage the funds (§ 406(b)(2)(B). The provision also calls for periodic review to determine whether payments in this form are still necessary, and for judicial appointment of a guardian or legal representative if the need for payments to another interested individual continues beyond a specified period (§ 406(b)(2)(c). The state plan must additionally provide for foster care benefits. (§ 406(b)(2)(D))

More significantly, Congress has required that states participating in the federal welfare program must provide for aid in the form of foster care in behalf of a child described in § 408. (See 42 U.S.C. § 606(b)(2)(D)). Prior to the enactment of the foster care program, a child removed from the home of a parent or relative because of abuse, neglect, or other unsuitable condition, and subsequently placed in the home of a non-related person simply could not obtain aid under § 406. In response to this problem, Congress enacted the § 408 AFDC foster care program so that children who could not live with a parent or specified relative, and who had to live with a non-relative, could nevertheless obtain federal financial assistance.

In contrast to the basic AFDC program under § 406, the foster care provisions of § 408 support the interpretation that Congress intended to extend AFDC assistance to a group definitely not previously covered i.e., unrelated persons caring for needy children. Whereas § 406 consistently treats parents and close relatives as a single unit, the terms "foster care" and "child-care institution" regularly appear together as another separate unit in § 408. Thus, § 408(a) defines a child who is eligible for foster care payments as one who would meet the requirements of § 406, except that he has been (a) removed by court order from the home of a parent or specified relative because continuation there would be contrary to his welfare, (b) is placed under the responsibility of a state or local agency which meets requirements not relevant here, (c) is placed in a foster family home or child-care institution, and (d) had been receiving AFDC or was eligible to receive AFDC at the time the court proceedings were initiated or within six months prior to the time judicial proceedings began.

Needy dependent children who are removed, with or without a court order, from the home of one § 406 relative and placed in the home of another § 406 relative are now, and always have been, entitled to AFDC assistance. *See* 45 C.F.R. § 233.90(c)(1)(v)(B). Section 408(a) specifically defines a needy dependent child as one who has been removed from the home of a parent or relative because the conditions in such home have become unsuitable. Congress could not have intended by the provisions of § 408(a) to merely duplicate federal assistance which was already provided under AFDC to dependent children living with parents and close relatives. Rather, the newer AFDC-FC program was clearly meant to remedy those situations where related care for dependent children is either unavailable or inadequate by providing a less desirable but necessary

alternative to care in the child's own home or home of a relative in the form of foster care. Thus, while the basic AFDC program relates to needy children who are living with parents or close relatives, the federal foster care program under § 408(a) can only refer to needy dependent children who are living somewhere other than in the home of a parent or close relative.

Section 408(b) extends the definition of "aid to families with dependent children" by providing that it "shall notwithstanding § 406(b) . . . *include also* foster care in behalf of a child described in paragraph (a) of this section—(1) in the foster family home of any individual . . . or (2) in a child-care institution." (emphasis added) It is plain that by using the words "include also" in § 408(b), Congress extended the AFDC program from related care which was already covered under § 406 to child care in a foster home by an unrelated person. Plaintiffs isolate the words "any individual" in this section to support their claim that children living in homes maintained by relatives are eligible for foster care benefits. However, in interpreting a statute, the Court is not guided by a single sentence or member of a sentence, but must look to the provisions of the whole law, to its object and policy. *Philbrook* v. *Glodgett,* 421 U.S. 707, 44 L. Ed. 2d 525, 532-33 (1975); *Richards* v. *United States,* 369 U.S. 1, 11, 7 L. Ed. 2d 492, 499 (1962). When read in light of the overall federal welfare statutory scheme, the term "any individual" in § 406(b) manifests the intention of Congress that assistance is to be provided for foster care whether the care is administered in the home of an individual person or family, or in a child-care institution. No other interpretation is logically possible.

In determining that foster care includes related care, the court of appeals placed considerable emphasis on the fact

that § 408 does not literally exclude relatives from coverage. This method of statutory construction has been emphatically rejected:

> Several of the courts . . . have held that persons who are arguably included in the federal eligibility standard must be deemed eligible unless the Act or its legislative history clearly exhibits an intent to exclude them from coverage, in effect creating a presumption of coverage when the statute is ambiguous (Citation omitted). This departure from ordinary principles of statutory interpretation is not supported by the Court's prior decisions. (*Burns* v. *Alcala,* 420 U.S. 575, 43 L. Ed. 2d 469, 475 (1975).

Instead, since the definition of "foster family home" is unclear from the statute itself, it is both necessary and appropriate to examine other sections of the federal welfare scheme in order to determine the meaning and scope of the § 408 foster care program. *Philbrook* v. *Glodgett,* 421 U.S. 707, 713, 44 L. Ed. 2d 525, 532-33 (1975).

Other provisions of the Social Security Act conclusively establish that foster care is simply not considered to be related care. Section 408(f) is especially pertinent in that it clarifies the concept that foster care, whether in a private home or in an institution, is regarded merely as a temporary measure. Under § 408(f), Congress has required that once a child is taken from the home of his parent or relative and placed in a foster home, further remedial action must be taken by the state. Thus, the state plan must:

> (f) include[s] provision for (1) development of a plan for each such child (including periodic review of the necessity for the child's being in a foster family home or child-care institution) to assure that he receives proper care and that services are provided which are designed to improve the conditions in the home from which he was removed or to otherwise make possible his being placed in the home of a relative specified in section 606(a) of this title . . . (42 U.S.C. § 608(f). (emphasis added).

This section clearly indicates that foster care is only temporary care. Foster care must be terminated whenever the child can be returned to the home of his parent or relative with whom he was living or placed in the home of another § 406 relative. If foster care constitutes care provided by relatives, it makes no sense that a child should be removed from the "foster care" of one relative and placed with another relative. Yet, the states are mandated under § 408(f) to remove the child from a foster care placement and must place the child in another relative's home as soon as possible. Instead, the only reasonable conclusion to be drawn from this provision is that Congress could not have intended to extend federal foster care coverage to a group of persons (relatives caring for needy children) who were already covered by § 406, or to needy dependent children who are living with relatives.

Finally, in authorizing greater money payments for foster care, § 403(a)(1)(B) again emphasizes that Congress intended to treat the foster care program separately from the regular AFDC program, which has included related care since the inception of the Social Security Act in 1935. The allocation of higher funds was first made in 1967, following a recognition by Congress that "[f]oster care for children is relatively costly, and States have reported that they cannot finance it without some additional Federal help." (S. Rep. No. 744, 90th Cong., 1st Sess. (1967) U.S. Cong. & Adm. News, V. 2, 3000) The Senate Committee stated that "[f]ederal sharing will be possible in payments up to $100 a month . . . for children in foster care," (Id. at 3001) in order to provide "more favorable Federal matching . . . for foster care for children removed from an unsuit-

able home [of a parent or relative] by court order." Id. at 2837-38. (emphasis added) Further comments of the Senate Committee are enlightening:

> The committee believes that the AFDC program *already offers* an opportunity for States to receive Federal financial assistance in the cost of care for many children who have no parents or who are not able to live with their parents. Under AFDC children are eligible for assistance only if they are living with one or more specified relatives . . . Federal sharing is available to reimburse the relative for the cost of providing a home for the child. . . .
>
> Under the committee bill, Federal funds will be available on a more liberal basis *than for the basic program* [which includes relatives caring for an indigent child] out of a recognition that foster family care is more costly than care in the child's home . . .These liberalizations will be of material assistance to States and localities and will facilitate plans being developed for children based on the need of the child rather than the fiscal condition of the local government. Id. at 3001-02. (emphasis added)

These comments, as well as the various sections of the AFDC program when compared with the AFDC-FC provisions of § 408, leave little doubt that both parental and related home care are regarded in the federal statute as the most desirable means of protecting the child, whereas "protective payments," foster home care, and institutional child-care are separate remedies, or necessary alternatives, when conditions in the child's own home or home of a relative become unsuitable.

In examining the above provisions, the three-judge district court which initially decided this case stated that "[f]ar from being inconsistent with the federal scheme, the Illinois scheme implementing AFDC in general seems to parallel it." *Youakim* v. *Miller*, 374 F. Supp. 1204, 1210

(N.D. Ill. 1974). The three-judge district court found that the federal statute makes the same classification as the Illinois statute in two ways: (1) the federal statute authorizes aid to the natural parents and relatives of dependent children in one section (42 U.S.C. § 606), and aid to foster parents in another section (42 U.S.C. § 608); and (2) that, like the Illinois statute, the federal plan allocates more money to foster care payments than to regular AFDC payments. [Citing § 603(a)(1)(B); *Ramos* v. *Montgomery*, 313 F. Supp. 1179, 1182 (S.D. Cal. 1970)]. This Court subsequently noted:

> Had appellants [appellees here] relied on the Supremacy Clause issue as a separate ground for decision it would appear that the claim would have been rejected by the District Court. (*Youakim* v. *Miller*, 425 U.S. 231, 235, 47 L. Ed. 2d 701, 706 (1976)).

The distinction between foster parents and related persons caring for needy children was also recognized by this Court in *Burns* v. *Alcala*, 420 U.S. 575, 43 L. Ed. 2d 469 (1975), which concerned the eligibility of an unborn child to receive AFDC benefits. In denying payments to this group of recipients, the Court stated:

> The restricted purpose of the AFDC program is evidenced in the Act itself by the limitations on aid. The Act originally authorized aid only for children living with designated relatives. The list of relatives has grown . . . but there is still no general provision for AFDC payments to needy children living with distant relatives or unrelated persons, or in institutions. (43 L. Ed. 2d at 476)

The Court then added in a footnote:

> The Act now authorizes, in addition to payments for children in the homes of designated relatives, foster care payments for children who have been removed from the homes of relatives. 42 USC § 608. (43 L. Ed. 2d at 476, n. 9)

The practical result of the decision of the court of appeals in this case is the judicial creation of a special group of beneficiaries like the plaintiffs who are eligible for aid under both § 406 and § 408. The adverse impact of this decision on needy dependent children covered by the Act is readily apparent. Federal assistance is provided under § 406 to encourage relatives to voluntarily care for children who can no longer reside with their parents. By providing foster care aid under § 408 to children living with relatives, such relatives would have no incentive to care for children under the § 406 plan. Because more financial benefits are available under the § 408 foster care program, the court's decision creates a financial incentive for relatives to refrain from caring for needy children until the children have been removed from their homes by court order. This procedure, given its possible traumatizing effects, can never be in the best interests of the child.

The Social Security Act, upon which the Illinois statute is based, classifies only two groups of aid recipients—one composed of parents and relatives, and the other consisting of child-care institutions and strangers who provide foster care. The plaintiffs, who are related to the needy children for whom they care, are simply not foster parents within the ambit of the AFDC-FC program provided for in § 408. As shown, this interpretation finds clear support in the literal language of the Social Security Act.

B.

The Legislative History Of The Social Security Act Illustrates The Congressional Intent To Create A Separate Foster Care Program Distinct From The Regular AFDC Program.

Since its inception, the Social Security Act has clearly distinguished federal aid aimed at keeping a child in the

home of a parent or close relative from that granted to "homeless" children residing in foster homes. First, under Title IV, cash grants were made primarily to female heads of families who were widowed, divorced, or deserted, in order to keep young children with their mothers in their own homes. (S. Rep. No. 628, 74th Cong., 1st Sess. 17 (1935)) This was recognized as the least expensive and most desirable method for meeting the needs of these families yet devised. *Id.*

Also under Title IV, cash payments were made to certain relatives of a needy child, since a "dependent child" was then, as now, defined as one living with a near relative in a residence maintained by such relative as his own home. *Id.* at 36. At the same time, Congress gave somewhat limited notice to another separate group of needy children, and provided for them in a completely distinct program under Title V:

> Another large group of children who stand in great need of protective measures are the homeless and neglected children. There are in this country approximately 300,000 dependent and neglected children, three-fifths of whom are cared for *in institutions,* and the remainder *in foster homes.* . . . [T]hese children "are in many respects the most unfortunate of all children, as their lives have already been impaired. To repair these damaged lives, as far as possible, and to keep these children from becoming a permanent burden to society, child-care services have been established in most urban centers, but in less populous areas they are exceedingly limited or nonexistent." . . . To stimulate the development of these badly needed child-care services, . . . a small amount of Federal aid (which does not have to be matched) is *authorized in title V.* (S. Rep. No. 628, 74th Cong., 1st Sess. 19 (1935)) (emphasis added)

For over twenty-five years these two programs existed separately. In 1961, however, it was recognized that even though the objective of the federal welfare program is to provide cash assistance for needy children in their own homes, that is, in the home of a parent or close relative,

> ... there are some home environments that are clearly contrary to the best interests of these children. . . . Often, however, remedial action on behalf of the child was not possible. We believe that this undesirable situation could be avoided, in many instances, if assistance under this program were available for the care of the child in a foster family home when such care is necessary. (S. Rep. No. 165, 87th Cong., 1st Sess. (1961) U.S. Cong. & Adm. News, V. 2, 1721)

The Senate Committee noted that while federal funds available through child welfare services to states under Title V were being used for foster care of children to a limited extent, a lack of financial resources had hindered the development of the most suitable care for children who had to be cared for outside their own home. *Id.* As a result, the new bill creating the AFDC-FC program allowed the states the option of bringing needy dependent children under the federally aided program, where a court of competent jurisdiction found that the children were not receiving proper care and protection in the home of their parents or relatives. In explaining the new provision, the Senate Committee stated:

> The foster care provisions in your committee's bill have been designed, insofar as possible, to safeguard the rights of the child and his parents or relatives. No one takes lightly the severance, even for a brief period, of the ties between a child and a parent, or somebody closely related to him. *At the same time,* an effort has been made to write into the law provisions which would stimulate and assist the States in the *protection and*

> *care of children.* (S. Rep. 165, 87th Cong., 1st Sess. (1961) U.S. Cong. & Adm. News, V. 2, 1722) (emphasis added)

Thus, while Congress recognized that the strengthening of family ties is indeed important, the statement quoted above also reflected that Congress' paramount purpose was to "assist the States in the protection and care of children." The statement regarding the safeguarding of the rights of a child or his relatives refers directly to certain precautions contained in §408(f), to which the states would have to comply if they wished to take advantage of the new foster care program. As previously shown, among these are provisions for periodic review of the necessity for the child's being in a foster family home or child-care institution; for assurance that the child is receiving proper care in the foster home; and for making possible services designed to improve the conditions in the home from which the child was removed, or to otherwise make possible his being placed in the home of a relative. It is obvious from § 408(f) that once a child is returned to his parents or otherwise placed in the home of a relative, he is no longer considered to be receiving foster care.

The new provisions for foster care became a permanent feature of the federal welfare law in 1962. In summarizing the various components of the AFDC program, the Senate Committee noted at that time:

> Prior to present temporary provision which will expire June 30, 1962, no Federal participation was authorized for children in foster care since program was limited to children living in home of a parent or a relative of the degree noted above. (Hearings Before Sess., on H.R. 10606, Public Assistance Act of 1962, p. 16).

In commenting on the desirable features of the foster care program, the Senate Committee noted in its 1962 report that the foster care program gave "the States an alternative to leaving the children in unsuitable homes or caring for them elsewhere without Federal participation in the cost." S. Rep. No. 1589, 87th Cong., 2d Sess. (1962) U.S. Cong. & Adm. News, V. 1, 1954.

Testimony offered by advocates of the foster care provisions likewise demonstrates that the § 408 foster care program, as popularly understood, provided coverage only for those children living with persons unrelated to them. As noted in the recommendations of the Ad Hoc Committee on Public Welfare appointed to serve the Secretary of Health, Education and Welfare:

> The Amendment to title IV which provides payments to children in foster homes is a significant departure from the earlier exclusive stress in this program on children living with parents or relatives. (Hearings before Committee on Finance, U.S. Senate, 87th Cong., 1st Sess., on H.R. 10606, Public Assistance Act of 1962, p. 83.)

Even more significantly, the Welfare Committee of the National Association of County Officials noted:

> In our opinion, a needy child in a foster home is equally as deserving and needy as one of an unemployed parent or one who has a parent *or relative* to reside with, thereby making him eligible for ADC aid. (Id. at 344) (emphasis added).

In 1967, Congress amended the foster care provision to provide more favorable federal matching, and to broaden eligibility for foster care for children removed from an unsuitable home by court order. (S. Rep. No. 744, 90th Cong., 1st Sess. (1967) U.S. Cong. & Adm. News, V. 2, 2837-38). The broadened eligibility resulted from the removal

by Congress of the restriction that in order for a state to receive any federal matching funds, the children must have been recipients of AFDC when the court issues its order. Comments made by the Senate Committee describing the new basis for eligibility, which is now contained in § 408 (a), again reflect the Congressional intent to distinguish between foster care and related care:

> There is some evidence that courts may be reluctant to place a child in foster care because Federal funds are not available (and the cost of the care must come out of local funds in many areas) unless the child is *in the home of a specified relative* [who is receiving AFDC payments on behalf of the child]. The proposed change would make the cost of caring for children in foster care subject to Federal sharing if the child has been placed in foster care by a court order (if the child is removed from the home of a relative as a result of judicial determination that continuation in such home would be contrary to his welfare) and if the child would have been eligible for aid under the AFDC program if an application had been made on his behalf. (S. Rep. No. 744, 90th Cong., 1st Sess. (1967) U.S. Cong. & Adm. News, V. 2, 3001) (emphasis added).

Clearly, if foster care placement was viewed as placement with a relative, the courts would not have hesitated to place a child in foster care, since federal funds would have been available. Instead, the courts' reluctance stemmed from the fact that foster care placement meant placement in unrelated homes, with the consequent loss of federal assistance. In giving the courts a welcome option under the § 408 foster care program, Congress was obviously concerned with the welfare and economic necessities of needy children placed with unrelated persons.

All of the foregoing forcefully demonstrates that the legislative history in addition to the plain meaning of the Social Security Act indicate that Congress intended that

§ 406 provide assistance only for needy children living with specified relatives while § 408 provide assistance only for needy children living with non-relatives. It is respectfully submitted that since the Illinois scheme simply parallels the federal one, it cannot be found that Illinois' treatment of relatives caring for needy children is incompatible with the Social Security Act.

C.

The Position Taken By The Department Of Health, Education And Welfare In This Case Is Contrary To Federal Law And Should Not Be Followed.

The position of HEW is formulated in the Program Instruction APA-PI-75-9, issued by HEW on October 25, 1974. (A. 48-50) This Program Instruction states that "[w]hen a child has been removed from his home by judicial determination and is placed in foster care under the various conditions specified . . ., the foster care rate of payment prevails regardless of whether or not the foster care home is operated by a relative." (A. 49) The Solicitor General of the United States filed a brief on behalf of HEW, essentially adopting this position. (A. 51-56)

While the Court regularly resorts for guidance to the rulings, interpretations and opinions of the agency responsible for the administration of the Social Security Act, the Court has stated that it will not accept HEW's interpretations which are inconsistent with the federal statute. *Townsend* v. *Swank*, 404 U.S. 282, 286, 30 L. Ed. 2d 448, 453 (1971); *King* v. *Smith*, 392 U.S. 309, 333, 20 L. Ed. 2d 1118, 1134 (1968). The instant case presents such a situation in which the HEW position should not be followed.

The position taken by HEW in its Program Instruction and *amicus* brief to the Supreme Court is by no means its

first stand on the issue of AFDC-FC eligibility. In response to an inquiry from the Illinois Department of Public Aid asking whether federal foster care funds were available for relatives specified in Section 406(a), HEW stated in a letter written in 1971 that:

> Federal participation would not be available in such payments. Title IV of the Federal Act distinguishes between AFDC and AFDC Foster Care by providing (1) for assistance in behalf of needy children living with specified relatives and (2) for assistance under specified circumstances on behalf of children removed from the home of a specified relative and placed in a foster family home or child-care institution.

The entire letter is reproduced in the Supplement at page S-26. It is readily apparent that the recent position of HEW expressed in the Program Instruction and taken in this case directly contravenes its previously expressed policy regarding § 408. Agency interpretations which conflict with earlier pronouncements rendered closer to the enactment of a particular statute should be given little weight. *General Electric Co.* v. *Gilbert*, 429 U.S. 125, 50 L. Ed. 2d 343, 358-59 (1976). It should be noted that § 408 has not been amended since 1968, so that the change in HEW's policy cannot be explained on that basis. HEW's failure to arrive at a consistent policy certainly minimizes any weight which its most recent interpretation might carry.

Furthermore, HEW's revised policy does not derive support from its own published regulations, which, again, have not been amended since the issuance of the 1974 Program Instruction. Rather, HEW's official regulations indicate a distinction between AFDC and AFDC-FC in that parents and relatives are eligible for AFDC assistance while any other individual and voluntary institutions are eligible for

AFDC-FC assistance. For example, 45 C.F.R. § 233.90 (c)(1)(v)(A)(1) dealing with the AFDC program, provides:

> (c) *Federal financial participation.* (1) Federal financial participation under title IV-A of the Social Security Act in payments with respect to a "dependent child", as defined in section 406(a) of the Act, is available within the following interpretations:
>
> • • •
>
> (v) *"Living with [a specified relative] in a place of residence maintained • • • as his • • • own home."* (A) A child may be considered to meet the requirement of living with one of the relatives specified in the Act if his home is with a parent or a person in one of the following groups:
>
> (1) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great.

Especially significant, however, is § 233.90(c)(1)(v)(B) (1) and (2):

> (B) A home is the family setting maintained or in process of being established, as evidenced by assumption and continuation of responsibility for day to day care of the child by the relative with whom the child is living. A home exists so long as the relative exercises responsibility for the care and control of the child, even though either the child or the relative is temporarily absent from the customary family setting. *Within this interpretation, the child is considered to be "living with" his relative even though*
>
> (1) *He is under the jurisdiction of the court (e.g., receiving probation services or protective supervision); or*

> (2) *Legal custody is held by an agency that does not have physical possession of the child.* (emphasis added)

This regulation has direct application to the instant case, because the minor plaintiffs are living with a specified relative and are thus eligible for AFDC pursuant to § 406 even though they are under the court's supervision and are in the legal custody of the Department of Children and Family Services. Moreover, in delineating the extent of federal financial participation in the AFDC program, § 233.90(c)(2)(i) and (iii) provide:

> (c) *Federal financial participation.*
>
> • • •
>
> (2) Federal financial participation is available in:
>
> (i) Initial payments made on behalf of a child who goes to live with a relative specified in section 406(a)(1) of the Social Security Act within 30 days of the receipt of the first payment, provided payments are not made for a concurrent period for the same child in the home of another relative or as AFDC-FC;
>
> • • •
>
> (iii) Payments made for the entire month in the course of which a child leaves the home of a specified relative, provided payments are not made for a concurrent period for the same child in the home of another relative or as AFDC-FC;

It is obvious from a fair reading of this section that the AFDC program provides for care of chidren living with relatives and that the AFDC-FC provides assistance in situations not involving relatives.

This distinction is further manifested in HEW's regulations established pursuant to the AFDC-FC program. Under 45 C.F.R. § 233.110(a)(2), the state foster care plan submitted under the Social Security Act must:

(2) Provide for development of a plan for each child described in subparagraph (1) of this paragraph, so that:

(i) He will be placed in a foster family home or a child care institution in accordance with his needs;

(ii) His need for and the appropriateness of his care and services in such placement will be reviewed not less frequently than every 6 months;

(iii) Services will be provided to improve the conditions in the home [of the parent or relative] from which he was removed or to make possible his placement in the home of another relative *under the State's AFDC plan.* (See § 220.19 of this chapter.) (emphasis added)

45 C.F.R. § 220.19 states:

Effective July 1, 1969, services must be provided for children receiving aid in the form of foster care under title IV—part A, to:

(a) Assure placement appropriate to the needs of each child.

(b) Assure that the child receives proper care in such placement.

(c) Determine continued appropriateness of and need for placement through periodic reviews at least annually.

(d) Improve the conditions in the home from which the child was removed, so that the child may be returned to his own home, *or otherwise plan for the placement of the child in the home of other relatives,* adoptive home *or continued foster care,* as appropriate.

(e) Work with other public agencies that have responsibility for the placement and care of any such children to assure that these agencies carry out their responsibilities in accordance with their agreement with the State agency administering or supervising the administration of AFDC. (emphasis added)

The clear import of these regulations is not only that foster care constitutes temporary care, but that foster care will terminate whenever the child can be returned to the home of a relative from which he was removed or placed in the home of another relative under the AFDC program. It would, of course, be nonsensical to terminate foster care and place the child with another relative, when conditions in the original relative's home cannot be improved, if the person providing care under the AFDC-FC program is related to the child. Therefore, the regulations adopted by HEW dictate the sound conclusion that recipients of aid under the AFDC-FC program cannot be related to the dependent children for whom they care.

In short, both the Social Security Act and the official HEW regulations demonstrate that parents and related persons are eligible for benefits under AFDC, while any other individuals or child-care institutions are eligible for assistance under the AFDC-FC program. The recent policy statement of HEW, which attempts to eliminate this crucial distinction is incorrect and should not be followed by this Honorable Court.

It is respectfully submitted that for all of the foregoing reasons the Illinois statutory foster care scheme is consistent with the purpose and meaning of the Social Security Act and cannot, therefore, violate the supremacy clause of the United States Constitution.

CONCLUSION

For the foregoing reasons, Defendants-Appellants respectfully urge this Honorable Court to reverse the judgment of the court of appeals which enjoined the enforcement of the Illinois statutes insofar as they exclude persons related to foster children from eligibility under the foster care welfare program, on the ground that these statutes violate the Social Security Act and the supremacy clause of the United States Constitution.

Respectfully submitted,

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SUPPLEMENT

42 U.S.C. § 601:

§ 601. Authorization of appropriations

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistant and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

Aug. 14, 1935, c. 531, Title IV, § 401, 49 Stat. 627; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, c. 836, Title III, § 312(a), 70 Stat. 848; July 25, 1962, Pub. L. 87-543, Title I, § 104(a)(4), (c)(2), 76 Stat. 185, 186; Jan. 2, 1968, Pub. L. 90-248, Title II, § 241(b)(1), 81 Stat. 916.

42 U.S.C. § 602(a) provides in pertinent part:

§ 602. State plans for aid and services to needy families with children; contents; approval by Secretary

(a) A State plan for aid and services to needy families with children must

• • •

(7) except as may be otherwise provided in clause (8), provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income;

• • •

(19) provide—

(A) that every individual, as a condition of eligibility for aid under this part, shall register for manpower services, training, and employment as provided by regulations of the Secretary of Labor, unless such individual is—

(i) a child who is under the age 16 or attending school full time;

(ii) a person who is ill, incapacitated, or of advanced age;

(iii) a person so remote from a work incentive project that his effective participation is precluded;

(iv) a person whose presence in the home is required because of illness or incapacity of another member of the household;

(v) a mother or other relative of a child under the age of six who is caring for the child; or

(vi) the mother or other female caretaker of a child, if the father or another adult male relative is in the home and not excluded by clause (i),

(ii), (iii), or (iv) of this subparagraph (unless he has failed to register as required by this Subparagraph, or has been found by the Secretary of Labor under section 633(g) of this title to have refused without good cause to participate under a work incentive program or accept employment as described in subparagraph (F) of this paragraph);

and that any individual referred to in clause (v) shall be advised of her option to register, if she so desires, pursuant to this paragraph, and shall be informed of the child care services (if any) which will be available to her in the event she should decide so to register;

• • •

(20) effective July 1, 1969, provide for aid to families with dependent children in the form of foster care in accordance with section 608 of this title:

42 U.S.C. § 603(a)(1)(B):

§ 603. Payment to States; computation of amounts; Federal share of assistance payments; social and supportive services; appropriation; family planning services and supplies; reduction of amounts

(a) From the sums appropriated therefor, the Secretary of the Treasury shall (subject to Section 1320b of this title) pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to families with dependant children under the State plan (including expenditures for premiums under

part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

• • •

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (i) the product of $32 multiplied by the total number of recipients of aid to families with dependent children (other than such aid in the form of foster care) for such month, plus (ii) the product of $100 multiplied by the total number of recipients of aid to families with dependent children in the form of foster care for such month:

42 U.S.C. § 605:

§ 605. Use of payments for benefit of children

Whenever the State agency has reason to believe that any payments of aid to families with dependent children made with respect to a child are not being or may not be used in the best interests of the child, the State agency may provide for such counseling and guidance services with respect to the use of such payments and the management of other funds by the relative receiving such payments as it deems advisable in order to assure use of such payments in the best interests of such child, and may provide for advising such relative that continued failure to so use such payments will result in substitution therefor of protective payments as provided under section 606(b)(2) of this title, or in seeking appointment of a guardian or legal representative as provided in section 1311 of this title, or in the imposition of criminal or civil penalties authorized under State law if it is determined by a

court of competent jurisdiction that such relative is not using or has not used for the benefit of the child any such payments made for that purpose; and the provision of such services or advice by the State agency (or the taking of the action specified in such advice) shall not serve as a basis for withholding funds from such State under section 604 of this title and shall not prevent such payments with respect to such child from being considered aid to families with dependent children.

Aug. 14, 1935, c. 531, Title IV, § 405, 49 Stat. 629; July 25, 1962, Pub. L. 87-543, Title I, § 107(a), 76 Stat. 188.

42 U.S.C. § 606:

§ 606. Definitions

When used in this part—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;

(b) The term "aid to families with dependent children" means money payments with respect to, or (if provided in or after the third month before

the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, a dependent child or dependent children, and includes (1) money payments or medical care or any type of remedial care recognized under State law to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 607 of this title, and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 602(a)(7) of this title) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual, but only with respect to a State whose State plan approved under section 602 of this title includes provision for—

(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child and, therefore, it is necessary to provide such aid with respect to such child and relative through payments described in this clause (2);

(B) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family;

(C) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary;

(D) aid in the form of foster home care in behalf of children described in section 608(a) of this title; and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made;

(c) The term "relative with whom any dependent child is living" means the individual who is one of the relatives specified in subsection (a) of this section and with whom such child is living (within the meaning of such subsection) in a place of residence maintained by such individual (himself or together with any one or more of the other relatives so specified) as his (or their) own home.

(d) The term "family services" means services to a family or any member thereof for the purpose of preserving, rehabilitating, reuniting, or strengthening the family, and such other services as will assist members of a family to attain or retain capability for the maximum self-support and personal independence.

(e)(1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age of 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) of this section in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment—

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the household in which he is living, and

(B) such services as may be specified by the Secretary;

but only with respect to a State whose State plan approved under section 602 of this title includes provision for such assistance.

(2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate.

Aug. 14, 1935, c. 531, Title IV, § 406, 49 Stat. 629; Aug. 10, 1939, c. 666, Title IV, § 403, 53 Stat. 1380; Aug. 28, 1950, c. 809, Title III, Pt. 2, § 323(a), 64 Stat. 551; Aug. 1, 1956, c. 836, Title III, §§ 321, 322,

351(b), 70 Stat. 850, 855; July 25, 1962, Pub. L. 87-543, Title I, §§ 104(a)(3)(D), 108(a), 109, 152, 156(b), 76 Stat. 185, 189, 190, 206, 207; Oct. 13, 1964, Pub. L. 88-641, § 2(a), 78 Stat. 1042; July 30, 1965, Pub. L. 89-97, Title IV, § 409, 79 Stat. 422; Jan. 2, 1968, Pub. L. 90-248, Title II, §§ 201(f), 206(b), 207 (a), 241 (b)(5), 81 Stat. 880, 893, 916.

42 U.S.C. § 607 provides in pertinent part:

§ 607. Dependent children of unemployed fathers; definition

(a) The term "dependent child" shall, notwithstanding section 606(a) of this title, include a needy child who meets the requirements of section 606(a)(2) of this title, who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father, and who is living with any of the relatives specified in section 606(a)(1) of this title in a place of residence maintained by one or more of such relatives as his (or their) own home.

42 U.S.C. § 608:

§ 608. Payment to States for foster home care of dependent children; definitions

Effective for the period beginning May 1, 1961—

(a) the term "dependent child" shall, notwithstanding section 606(a) of this title, also include a child (1) who would meet the requirements of such section 606(a) or of section 607 of this title except for his removal after April 30, 1961, from the home of a relative (specified in such section 606(a)) as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child, (2) whose placement and care are the responsibility of (A) the State or local

agency administering the State plan approved under section 602 of this title, or (B) any other public agency with whom the State agency administering or supervising the administration of such State plan has made an agreement which is still in effect and which includes provision for assuring development of a plan, satisfactory to such State agency, for such child as provided in paragraph (f)(1) and such other provisions as may be necessary to assure accomplishment of the objectives of the State plan approved under section 602 of this title, (3) who has been placed in a foster family home or child-care institution as a result of such determination, and (4) who (A) received aid under such State plan in or for the month in which court proceedings leading to such determination were initiated, or (B)(i) would have received such aid in or for such month if application had been made therefor, or (ii) in the case of a child who had been living with a relative specified in section 606(a) of this title within 6 months prior to the month in which such proceedings were initiated, would have received such aid in or for such month if in such month he had been living with (and removed from the home of) such a relative and application had been made therefor;

(b) the term "aid to families with dependent children" shall, notwithstanding section 606(b) of this title, include also foster care in behalf of a child described in paragraph (a) of this section—

(1) in the foster family home of any individual, whether the payment therefor is made to such individual or to a public or nonprofit private child-placement or child-care agency; or

(2) in a child-care institution, whether the payment therefor is made to such institution or to a public or nonprofit private child-placement or child-care agency, but subject to limitations pre-

scribed by the Secretary with a view to including as "aid to families with dependent children" in the case of such foster care in such institutions only those items which are included in such term in the case of foster care in the foster family home of an individual.

(c) the number of individuals counted under clause (A) of section 603(a)(1) of this title for any month shall include individuals (not otherwise included under such clause) with respect to whom expenditures were made in such month as aid to families with dependent children in the form of foster care; and

(d) services described in paragraph (f)(2) of this section shall be considered as part of the administration of the State plan for purposes of section 603(a)(3) of this title;

but only with respect to a State whose State plan approved under section 602 of this title—

(e) includes aid for any child described in paragraph (a) of this section, and

(f) includes provision for (1) development of a plan for each such child (including periodic review of the necessity for the child's being in a foster family home or child-care institution) to assure that he receives proper care and that services are provided which are designed to improve the conditions in the home from which he was removed or to otherwise make possible his being placed in the home of a relative specified in section 606(a) of this title, and (2) use by the State or local agency administering the State plan, to the maximum extent practicable, in placing such a child in a foster family home or child-care institution, of the services of employees, of the State public-welfare agency referred to in section 722(a) of this title (relating to allotments to States for child welfare services under

sections 721 to 728 of this title) or of any local agency participating in the administration of the plan referred to in such section, who perform functions in the administration of such a plan.

For purposes of this section, the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing homes of this type, as meeting the standards established for such licensing; and the term "child-care institution" means a nonprofit private child-care institution which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing.

Aug. 14, 1935, c. 531, Title IV, § 408, as added May 8, 1961, Pub. L. 87-31, § 2, 75 Stat. 76, and amended July 25, 1962, Pub. L. 87-543, Title I, §§ 101(b)(2)(D), 104(a)(3)(F), (G), 131(b), 135(a)-(d), 155(a), 76 Stat. 180, 185, 193, 196, 197, 207; Jan. 2, 1968, Pub. L. 90-248, Title II, §§ 201 (e)(4), 205(c), 81 Stat. 880, 892.

45 C.F.R. § 220.19:

§ 220.19 Foster care services

Effective July 1, 1969, services must be provided for children receiving aid in the form of foster care under title IV—part A, to:

(a) Assure placement appropriate to the needs of each child.

(b) Assure that the child receives proper care in such placement.

(c) Determine continued appropriateness of and need for placement through periodic reviews, at least annually.

(d) Improve the conditions in the home from which the child was removed, so that the child may be returned to his own home, or otherwise plan for the placement of the child in the home of other relatives, adoptive home or continued foster care, as appropriate.

(e) Work with other public agencies that have responsibility for the placement and care of any such children to assure that these agencies carry out their responsibilities in accordance with their agreement with the State agency administering or supervising the administration of AFDC.

45 C.F.R. § 233.90(c)(1)(v):

§ 233.90 Factors specific to AFDC.

* * *

(c) *Federal financial participation.* (1) Federal financial participation under title IV-A of the Social Security Act in payments with respect to a "dependent child", as defined in section 406(a) of the Act, is available within the following interpretations:

(v) *"Living with [a specified relative] in a place of residence maintained * * * as his * * * own home".*

(A) A child may be considered to meet the requirement of living with one of the relatives specified in the Act if his home is with a parent or a person in one of the following groups:

(1) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great.

(2) Stepfathers, stepmother, stepbrother, and stepsister.

(3) Persons who legally adopt a child or his parent as well as the natural and other legally

adopted children of such persons, and other relatives of the adoptive parents in accordance with State law.

(4) Spouses of any persons named in the above groups even after the marriage is terminated by death or divorce.

(B) A home is the family setting maintained or in process of being established, as evidenced by assumption and continuation of responsibility for day to day care of the child by the relative with whom the child is living. A home exists so long as the relative exercises responsibility for the care and control of the child, even though either the child or the relative is temporarily absent from the customary family setting. Within this interpretation, the child is considered to be "living with" his relative even though

(1) He is under the jurisdiction of the court (e.g., receiving probation services or protective supervision); or

(2) Legal custody is held by an agency that does not have physical possession of the child.

45 C.F.R. § 233.90(c)(2):

• • •

§ 233.90 Factors specific to AFDC.

(c) *Federal financial participation.*

• • •

(2) Federal financial participation is available in:

(i) Initial payments made on behalf of a child who goes to live with a relative specified in section 406(a)(1) of the Social Security Act within 30 days of the receipt of the first payment, provided payments are not made for a concurrent period for the same child in the home of another relative or as AFDC-FC;

(ii) Payments with respect to an unborn child when the fact of pregnancy has been determined by medical diagnosis;

(iii) Payments made for the entire month in the course of which a child leaves the home of a specified relative, provided payments are not made for a concurrent period for the same child in the home of another relative or as AFDC-FC; and

(iv) Payments made to persons acting for relatives specified in section 406(a)(1) of the Act in emergency situations that deprive the child of the care of the relative through whom he has been receiving aid, for a temporary period necessary to make and carry out plans for the child's continuing care and support.

45 C.F.R. § 233.110:

§ 233.110. AFDC foster care

(a) *State plan requirements.* A State plan under title IV-A of the Social Security Act must:

(1) Provide that aid will be given in the form of foster care for each otherwise eligible child:

(i) Who was removed after April 30, 1961, from the home of a relative specified in the AFDC plan, as a result of a judicial determination that continuance in the home of the relative would be contrary to his welfare, for any reason, and who has been placed in foster care as a result of such determination; and

(ii) (a) Who, in or for the month in which that court action was initiated, was receiving AFDC, or would have received AFDC if application had been made, or

(b) Who lived with a relative specified in the AFDC plan within 6 months prior to the month in which that court action was initiated, and who would have received AFDC in or for such month

if in such month he had been living with (and removed from the home of) such a relative and application had been made for him; and

(iii) Whose placement and care are the responsibility of the State agency administering or supervising the administration of the AFDC plan, or, if the State so elects, are the responsibility of any other public agency, or type or types of public agencies specified in the plan, with whom the State agency has a currently effective agreement that provides for development of a plan satisfactory to the State agency for AFDC-FC children in accordance with subparagraph (2) of this paragraph and that contains other provisions necessary to achieve the objectives of the State's AFDC plan.

(2) Provide for development of a plan for each child described in subparagraph (1) of this paragraph, so that:

(i) He will be placed in a foster family home or a child care institution in accordance with his needs;

(ii) His need for and the appropriateness of his care and services in such placement will be reviewed not less frequently than every 6 months;

(iii) Services will be provided to improve the conditions in the home from which he was removed or to make possible his placement in the home of another relative under the State's AFDC plan. (See § 220.19 of this chapter.)

(3) Provide that maximum use will be made of the services of employees of the State public welfare agency responsible for the plan for child-welfare services under title IV-B of the Act or of any local agency participating in the administration of such plan.

(4) Specify:

(i) In what types of child care institutions (private nonprofit, or public, or both), in addition to foster family homes, placement will be made; and

(ii) Whether payments will be made to foster homes and institutions only or also to other agencies.

(5) Provide that there will be specific criteria for determining the amount of payment for foster care in foster family homes and in child care institutions. In establishing rates of payment to institutions, only those items included for care in foster family homes will be included, and overhead costs of the institution will be excluded.

Under the requirements of this paragraph, provision must be made for both foster family care and institutional care in accordance with the individual child's needs; public institutions may be used, without Federal financial participation, to discharge the institutional obligation in whole or in part; and the use of institutions outside the State will also meet the requirement for the provision of institutional care.

(b) *Federal financial participation.* (1) Federal financial participation is available, effective January 1, 1968, in AFDC-FC payments not to exceed an average of $100 per month per recipient, made on behalf of children as specified in section 403 of the Social Security Act, who are included in the approved State AFDC plan and who are placed in a foster family home, or nonprofit private child-care institution, licensed or approved by the agency which is responsible for licensing or approval of such facilities in the State where it is situated. The maximum of $100 average per month per recipient may be disregarded when the State claims Federal funds under the provisions of section 1118 of the Act.

(2) Federal financial participation is available in AFDC-FC payments made to an individual providing care in a foster family home, to a private nonprofit child care institution, or to a cooperating public or nonprofit private child placement or child-care agency. [36 F.R. 3869, Feb. 27, 1971]

Ill. Rev. Stat. 1971, ch. 23, § 4-1.2:

§ 4-1.2. Living Arrangements—Parents—Relatives—Foster Care)

The child or children must (1) be living with his or their father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, or other relative approved by the Illinois Department, in a place of residence maintained by one or more of such relatives as his or their own home, or (2) have been (a) removed from the home of the parents or other relatives by judicial order under the "Juvenile Court Act", approved August 5, 1965,[1] as amended, (b) placed under the guardianship of a county superintendent of public aid or the principal administrative officer in the Division of Child Welfare of the Department of Children and Family Services, and (c) under such guardianship, or other guardianship authorized prior to the effective date of this 1969 Amendatory Act, placed in a foster family home or child care institution licensed pursuant to the "Child Care Act", approved July 10, 1957, as amended,[2] or approved by that Department as meeting standards established for licensing under that Act. A child so placed in foster care who was not receiving aid under this Article in or for the month in which the court proceedings leading to that placement were initiated may qualify only if he lived in the home of his parents or other relatives at the time the proceedings were initiated, or within 6 months prior to the month of initiation, and would have received aid in and for that month if application had been made therefor.

1. Chapter 37, § 701-1 et seq.
2. Chapter 23, §§ 2301 to 2329.

The conditions of qualification herein specified shall not prejudice aid granted under this Code for foster care prior to the effective date of this 1969 Amendatory Act.

Amended by P.A. 76-1199, § 1, eff. Sept. 4, 1969.

Ill. Rev. Stat. 1971, ch. 23, § 2212.05:

§ 2212.05 Facility for child care defined]

§ 2.05 "Facility for child care" or "child care facility" means any person, group of persons, agency, association or organization, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody in any facility as defined in this Act, established and maintained for the care of children.

Ill. Rev. Stat. 1971, ch. 23, § 2212.17:

§ 2212.17 Foster family home and types of homes, defined]

§ 2.17. "Foster family home" means a facility for child care in residences of families who receive no more than 8 children unrelated to them, unless all the children are of common parentage, for the purpose of providing family care and training for the children on a full-time basis. The family's own children, under 18 years of age, shall be included in determining the maximum number of children served. The term "foster family home" includes homes receiving children from any State-operated institution for child care; or from any agency established by a municipality or other political subdivision of the State of Illinois au-

thorized to provide care for children outside their own homes. The types of foster family homes are defined as follows:

(a) "Boarding home" means a foster family home which receives payment for regular full-time care of a child or children.

(b) "Free home" means a foster family home other than an adoptive home which does not receive payments for the care of a child or children.

(c) "Adoptive home" means a foster family home which receives a child or children for the purpose of adopting the child or children.

(d) "Work-wage home" means a foster family home which receives a child or children who pay part or all their board by rendering some services to the family not prohibited by the Child Labor Law[1] or by standards or regulations of the Department prescribed under this Act. The child or children may receive a wage in connection with the services rendered the foster family.

(e) "Agency-supervised home" means a foster family home under the direct and regular supervision of a licensed child welfare agency, of the Department of Children and Family Services, of a circuit court, or of any other State agency which has authority to place children in child care facilities, and which receives no more than 8 children, unless of common parentage, who are placed and are regularly supervised by one of the specified agencies.

(f) "Independent home" means a foster family home, other than an adoptive home, which receives no more than 4 children, unless of common parentage, directly from parents, or other legally responsible persons, by independent arrangement and which is not subject to direct and regular supervision of a specified agency except as such supervision pertains to licensing by the Department.

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1. Chapter 48, § 31.1 et seq.

Ill. Rev. Stat. 1971, ch. 23, § 5005:

5005. Direct child welfare services.]

§ 5. To provide direct child welfare services when not available through other public or private child care or program facilities.

For purposes of this Section:

The term "children" means persons found within the State who are under the age of 18 years at the time of acceptance for service or care. The term also includes children under age 18 and children age 18 or more but under age 21 who (1) are in foster care under order of a court and (2) were, at any time before August 1, 1969, recipients of foster care under Sections 6-4 or 12-8.6 of "The Illinois Public Aid Code", approved April 11, 1967, as amended.[1]

The term "child welfare services" means public social services which supplement or substitute for parental care and supervision for the purpose of: (1) preventing or remedying or assisting in the solution of problems which may result in the neglect, abuse or exploitation of children; (2) protecting and caring for homeless, dependent or neglected children; (3) protecting and promoting the welfare of children, including the strengthening of their own families and counseling of family members; (4) providing adequate care of children away from their homes, where needed, in foster family homes or day care or other child care facilities; or (5) providing counseling for mentally retarded, physically, and socially handicapped children and their parents when not otherwise available.

The Department shall establish and maintain tax-supported child welfare services and extend and seek to improve voluntary services throughout the State, to the end that services and care shall be available on an equal basis throughout the State to the children requiring such services.

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1. Chapter 23, §§ 6-4, 12-18.6.

For the purpose of insuring effective state-wide planning, development, and utilization of resources for the day care of children, operated under various auspices, the Department is hereby designated to coordinate all day care activities for children of the State and shall:

(1) Develop a comprehensive day-care plan for the State which identifies high-priority areas and groups, relating them to available resources, and identifying the most effective approaches to the use of existing day care services. The plan shall include methods and procedures for the development of additional day care resources for children to meet the goal of reducing short-run and long-run dependency and to provide necessary enrichment and stimulation to the education of young children. Recommendation shall be made for State policy on optimum use of private and public, local, state and federal resources. A written plan shall be submitted to the Governor, annually, on January 1, and shall include an evaluation of developments over the proceeding year, including cost-benefit analyses of various arrangements.

(2) The Department shall conduct day care planning activities within the following priorities:

(a) development of voluntary day care resources wherever possible, with the provision for grants-in-aid only where demonstrated to be useful and necessary as incentives or supports;

(b) emphasis on service to children of recipients of public assistance where such service will allow training or employment of the parent toward achieving the goal of independence;

(c) maximum employment of recipients of public assistance in day care centers and day care homes, operated in conjunction with short-term work training programs;

(d) care of children from families in stress and crises whose members potentially may become, or are in danger of becoming, non-productive and dependent;

(e) expansion of family day care facilities wherever possible;

(f) location of centers in economically depressed neighborhoods, preferably in multi-service centers with cooperation of other agencies;

(g) use of existing facilities free of charge or for reasonable rental wherever possible in lieu of construction.

(3) Based on its planning activities, the Department shall actively stimulate the development of public and private resources at the local level. It shall also seek the fullest utilization of federal funds directly or indirectly available to the Department.

(4) Where appropriate, existing non-governmental agencies or associations shall be involved in planning by the Department.

The Department shall establish rules and regulations concerning its operation of programs established to meet these purposes, including but not limited to adoption, foster care, family counseling, protective services, service to unwed mothers, homemaker service, return of runaway children, and interstate services.

The Department may provide financial assistance, and shall establish rules and regulations concerning such assistance, to persons who adopt physically or mentally handicapped, older and other hard-to-place children who immediately prior to their adoption were legal wards of the Department. The amount of assistance may vary, depending upon the needs of the child and the adoptive parents, but must be less than the monthly cost of care of the child in a foster home. Special purpose grants are allowed where the child requires special service but such costs may not exceed

the amounts which similar services would cost the Department if it were to provide or secure them as guardian of the child.

The Department shall accept for care and training any child who has been adjudicated neglected or dependent committed to it pursuant to the "Juvenile Court Act".[2] The Department may, at its discretion except for those children also adjudicated neglected or dependent, accept for care and training any child who has been adjudicated delinquent or as a minor in need of supervision, under the "Juvenile Court Act", but no such child shall be committed to the Department by any court without the approval of the Department.

The Department may assume temporary custody of any child (1) if it has received a written consent to such temporary custody signed by the parents of the child or by the parent having custody of the child if the parents are not living together or by the guardian or custodian of the child if the child is not in the custody of either parent or (2) if the child is found in the State and neither a parent, guardian nor custodian of the child can be located. The Department shall have the authority, responsibilities and duties that a legal custodian of the child would have pursuant to Section 1-12 of the "Juvenile Court Act".[3] A parent, guardian or custodian of a child in the temporary custody of the Department who would have custody of the child if he were not in the temporary custody of the Department may deliver to the Department a signed request that the Department surrender the temporary custody of the child. The Department may retain temporary custody of the child for 10 days after the receipt of the request, during which period the Department may cause to be filed a petition pursuant to the "Juvenile Court Act". If a petition is so filed, the Department shall retain temporary custody of the child until the

2. Chapter 37, § 701-1 et seq.
3. Chapter 37, § 701-12.

court orders otherwise. If a petition is not filed within the 10 day period, the child shall be surrendered to the custody of the requesting parent, guardian or custodian not later than the expiration of the 10 day period, at which time the authority and duties of the Department with respect to the temporary custody of the child shall terminate. The Department may place children under 18 years of age in licensed child care facilities when in the opinion of the Department, such placement would be for their best interest. Payment for board, clothing, care, training and supervision of any child placed in a licensed child care facility may be made by the Department, by the parents or guardians of the estates of those children, or by both the Department and the parents or guardians, except that no payments shall be made by the Department for any child placed in a licensed child care facility for board, clothing, care, training and supervision of such a child that exceed the average percapita cost of maintaining and of caring for a child in institutions for dependent or neglected children operated by the Department. However, such restriction on payments does not apply in cases where children require specialized care and treatment for problems of severe emotional disturbance, physical disability, social adjustment, or any combination thereof and suitable facilities for the placement of such children are not available at payment rates within the limitations set forth in this Section.

The Department may receive and shall use, in its entirety, for the benefit of children any gift, donation or bequest of money or other property which is received on behalf of such children, or any financial benefits to which such children are or may become entitled while under the jurisdiction or care of the Department.

Amended by P.A. 76-2041, § 1, eff. July 1, 1970; P.A. 77-1374, § 1, eff. Aug. 31, 1971.

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE
REGION V

433 WEST VAN BUREN STREET, ROOM 712
CHICAGO, ILLINOIS 60607

March 10, 1971

SOCIAL & REHABILITATION
SERVICE

Mr. Gordon Watters, Chief
Division of Program Development
Department of Public Aid
209 West Jackson Blvd., Room 602
Chicago, Illinois 60606

Dear Mr. Watters:

This responds to your letter of October 19, 1970 asking whether Federal financial participation is available in payments under the AFDC program to relatives within the relationship specified in Section 406(a) of the Social Security Act.

Federal participation would not be available in such payments. Title IV of the Federal Act distinguishes between AFDC and AFDC Foster Care by providing (1) for assistance in behalf of needy children living with specified relatives and (2) for assistance under specified circumstances on behalf of children removed from the home of a specified relative and placed in a foster family home or child-care institution.

Even if the Federal Act permitted Federal matching, Illinois statutes seem to preclude a relative's home being considered a foster home. Section 2217.17 of State law defines a foster family home as a "facility for child care in

residences who receives no more than 8 children *unrelated* to them . . . on a fulltime basis" (emphasis supplied). This definition is consistent with the traditional concept of a foster home in the child welfare field under which there is a distinct difference between a foster home and the home of a relative.

We wish to note that relatives caring for a child for whom they have no legal responsibility cannot be held responsible for any part of that child's living expenses. Therefore, the assistance grant must include all items in the State standards for AFDC that are included when a child lives with his parents or other needy relative. Only when the non-needy relative with whom he is placed freely contributes any of the requirements, may such contribution be considered as available in determining the amount of the payment. (See Program Regulation 20-7, CFR 233.20(a)(3)(ii)(c).

We question that your manual instructions make this policy entirely clear. For example. Section 1008.6 states, "an allowance to enable the recipient to pay his share of the total rent to a relative with whom he is living requires supervisory approval related to an evaluation of the total social and economic factors." This could be interpreted to mean that budgeting shelter cost for a child living with a self-supporting relative would be an exception to the general rule. The policy undoubtedly leads workers to assume income (contribution of shelter and other joint household expenses) in AFDC cases as well as in assistance to recipients in the adult categories. It should be modified and clarified to assure that budgeting practice does not assume income that is not actually available.

Many States have established a room and board standard plus clothing and personal incidental standard allowances

for AFDC assistance to children living with self supporting relatives. This has the advantage of eliminating inquiry into the circumstances of the relative. Although such a standard might not equal the foster care rate, it would be more nearly comparable and reasonable; and it would be consistent with policy as stated in Handbook Section IV 3435.3 on the subject of AFDC children in "Homes with Relatives other than Parents." If such a standard is established it must apply in *all* cases in which children are living with non-needy relatives other than parents.

You also asked if the Department of Children and Family Services could pay a relative for care and supervision of the child recipient without affecting the AFDC grant. As long as there is no claim for Federal financial participation in such a payment and DCFS is able to make such payments under State law, no question would be raised. In effect, this would be income for the relative and not for the child.

We hope that these comments will be helpful to you in reconsideration of budgeting policy for children living with relatives other than their parents.

Sincerely yours,

/s/ EDWARD J. SIENICKI,
Acting Regional Commissioner,
SRS